

**MINUTES
HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, May 15, 2007**

MEMBERS PRESENT: Robert Lessard, Chairman
Jack Lessard (alternate)
Jennifer Truesdale
Tom McGuirk
Matt Shaw

OTHERS PRESENT: Kevin Schultz, Building Inspector
Shirley Doheny, Recording Secretary

The chairman called the meeting to order at 7:00 p.m. Peter Saari led the Pledge of Allegiance. Jack Lessard asked for a moment for Mrs. Fred Clews who recently passed away.

06-07 The Appeal of Administrative Decision by Regina Higgins and Rose McNamara for property located at 845 Lafayette Road appealing the decision of the Hampton Planning Board, January 3, 2007, granting site plan approval under Article 2.5.4(F). This property is located at Map 90, Lot 31 in a RA/B zone.

Petition Withdrawn

07-07 The petition of Glen & Alice Regan for property located at 63 Dearborn Avenue seeking relief from Articles 4.2 and 4.3 to subdivide the existing lot into two lots, both of which will have more than the required area, but one of which will have less than the required frontage/lot width. This property is located at Map 145, Lot 1 in a RA zone.

Peter Saari came forward on behalf of Glen and Alice Regan and presented a letter of authorization to represent them. The intent is to divide the lot into two lots. Atty Saari presented the five criteria as presented in the petition. There is plenty of acreage for both but does not meet frontage requirements. Moving the house is not an option.

Questions from the Board

None

Comments from the Audience

None

Back to the Board

Chairman Lessard polled the Board regarding the criteria, they all agreed.

Jennifer Truesdale motioned to approve the petition, seconded by Tom McGuirk

Vote: 5-0

Petition Granted

Attorney Saari asked that petition 61-06 be put off until later in the meeting. The Board agreed.

08-07 The petition of Colsak Investments, LLC/Lisa Riley for property located at 426 Winnacunnet Road seeking relief from Articles 3.8, 4.1.1, 8.2.3 and 8.2.4 to remove all seven existing cabins and replace with six single family homes to be in condominium ownership along with the existing main building (with 2 units). This property is located at Map 208, Lot 48 in a RA/RB zone.

Atty. Peter Saari came forward with Brian Hayes. He reminded the Board of the approval granted in March, 2006 for six cottages. After that approval, Brian Hayes took over and decided to change the plans to a more traditional look. He went to the Planning Board and was approved. Atty. Saari stated that recently the cabins were torn down; Chairman Lessard stated they were removed. The question now is whether the new design is consistent with what was approved. They are still building a small house, but different in appearance. Atty. Saari presented a drawing comparing the two by size. Mr. Hayes believes these are more in keeping with the neighborhood, being more traditional. Chairman Lessard stated that the Zoning Board had approved cape type homes, two bedrooms. He stated that if this new design was brought before him, he would not have approved.

Questions from the Board

Jennifer Truesdale asked the square footage of the new proposed homes. Mr. Hayes stated, 1850 square feet on the same footprint. Mr. Hayes stated that part of the reason for the change is the change in the economy.

Comments from the Audience

Peter Olney, an abutter in the rear, came forward. This property is on the boundary of the RA and RB district and it is important to hold the line in those areas. He thinks the proposal is better than some others that have been proposed although it would be nice to see it conform. He asked if a variance was granted to allow multi-family in this RA district. Chairman Lessard said a variance to 3.8 had been granted.

Robert Mackle, 424 Winnacunnet Road stated that he and his wife had been sold on the previous approval for cape styles. He expressed concern with the additional height and how that will affect his property. He referred to the development across the street that has a cul-de-sac with only three houses in there. He is also concerned about a traffic issue. The original plan had a slab; the new plan has a full basement.

Back to the Board

Mr. Saari stated that the height is not significantly different. Chairman Lessard believes that the changes should have come back before the Board. Mr. Hayes stated that was the reason the letter was sent. Matt Shaw referred to the minutes from the earlier hearing, which did say they would be on a slab. They looked at 2 bedroom capes before and now four bedroom garrisons. His concern is on B the area variance. They have already shown a plan that was reasonable. Jack Lessard agreed with the earlier plan. This plan is too big. Tom McGuirk addressed the difference in density going from two to four bedrooms. Mr. Hayes disagreed. Chairman Lessard said that with the new proposal he would want to see a cul-de-sac. Atty. Saari stated that they cannot get a cul-de-sac in there. Matt Shaw stated the new plan is about 30% more house and 50% more bedrooms.

Jack Lessard motioned to deny the petition, seconded by Jennifer Truesdale.

Vote: 5-0

Petition denied

Mr. Schultz asked for a point of clarification. He wondered if the earlier variance is still in tact? Chairman Lessard asked to check with the Town Attorney. Mr. Schultz stated that because of the substantial progress that had been made, the variance won't run out. He sees this as an amended version of what has been approved but the amendment has been denied. Mr. Hayes asked if he came in with a plan for a cape could he get a building permit. He stated that one of the plans that was denied was a cape. Mr. Schultz referenced the letter that had been sent after the original approval. Mr. Shaw asked if a floor plan was submitted with the letter. There was not. Again, Mr. Schultz asked for clarification. If the applicant came in with a plan for a cape with two bedrooms could he get a permit? They discussed whether the design was a colonial or a saltbox. Chairman Lessard stated that the cellar is not a problem for him.

Chairman Lessard asked the Board if they would agree that they should check with the Town Attorney. The Board agreed. Chairman Lessard reviewed the letter that was sent. Again they discussed the change in the height and the impact of the cellars on the height. Chairman Lessard suggested not putting any more foundations in until they speak with the Town Attorney.

61-06 The rehearing of the Appeal of Administrative Decision by Walter J. Wyse and Andrew Guthrie for property located at 31-33 Ocean Boulevard appealing the decision of the Hampton Planning Board, September 6, 2006, ruling that the proposed condominium consists of motel rooms, not dwelling units. See Section 1.6 – Definitions; Article VIII. This property is located at Map 296, Lots 20, 32 and 33 in a BS zone.

Craig Soloman came forward with Mr. Wyse and Mr. Guthrie. Atty. Soloman stated the history of this petition. The earlier discussion revolved around the term in the ordinance defining dwelling units in part as permanent provisions for cooking. Also, that hotels are transient. The Planning Board had put a requirement on these that it was for transient use. He then referenced the recently passed zoning amendment that has given him a different way of thinking about this issue. Although the recently passed zoning amendment doesn't apply, it helps identify what the real issues were. In January, Atty. Soloman suggested that maybe they were both, a dwelling unit and a hotel room. The recent zoning amendment recognizes that these units were a little bit of both. The Planning Board also recognized that the issue wasn't about microwaves, but the issue was about parking. He is asking the Zoning Board to say that when the Planning Board decided that what was proposed were strictly hotel rooms, that either they were wrong or that they were right and they were also dwelling units. And if they were both, under RSA 676:14, the stricter requirements would apply which would address parking and setbacks, which concerns his clients.

Peter Saari came forward and started by reading a description of "dwelling unit". He suggests that the Planning Board considered a third option, which was that they were strictly hotel rooms, emphasizing transient lodging accommodations. He stated that when the Planning Board approved this application, with input from the Town Attorney, put a condition on the approval that it could not be a primary residence. He believes the Planning Board knew what they were doing when they voted on this. He referred to events that led up to the zoning amendments that were passed. He stated that part of the discussion was that the issue of dwelling unit or hotel unit needed to be dealt with. He believes the distinct difference "hotel", intended for transient use and "dwelling unit" intended for permanent use. The new zoning amendments define what you can have in a hotel room. Although the new amendments don't apply, the Planning Board was trying to clarify what was meant in the earlier ordinance.

Comments from the Audience

June White of 8 River Ave came forward. She questioned whether Harris Real Estate would continue to operate out of this building. Her concern is about parking for Harris Real Estate. The developer stated that Harris Real Estate would have an office. She also reminded the Board that there were fifty letters submitted against this project. Every abutter is opposed. She

believes the Planning Board approved something that didn't exist. Attorney Solomon referred to the memo dated September 6th, addressed to Jamie Steffen from the Town Attorney. She asked the Planning Board to consider not voting until they had more direction. She thinks the definition should have been clarified before they voted. Mr. Guthrie stated that everything in that area is transient living. He believes that the units are both dwelling units and hotel rooms. Atty. Solomon stated that the units would have microwaves. He doesn't believe that "transient use" can be the distinguishing factor. Mr. McGuirk stated that people expect a microwave in hotel units. Chairman Lessard believes that the Planning Board did the best they could with the zoning ordinance they had.

Back to the Board

Ms. Truesdale agrees that people want microwaves in hotel rooms, but they are not planning to live there permanently. Matt Shaw stated the question is whether or not the Planning Board made an error when they voted. He doesn't believe the Board made an error when they voted.

Matt Shaw motioned to deny the petition, seconded by Jennifer Truesdale.

Mr. McGuirk doesn't believe the Planning Board did anything wrong. Ms. Truesdale doesn't believe that this is the right place for it, but she agrees with the Planning Board's decision. Chairman Lessard also agrees that this isn't the right place, but the Planning Board didn't make an error with what they had. Matt Shaw agrees that this isn't the right place but believes it is similar to a project they had approved in the same zone. The Board doesn't believe the Planning Board did anything wrong.

Vote: 5-0

Petition Denied

BUSINESS SESSION

The Board decided to wait until next meeting to approve the minutes of the last meeting.

Kevin referenced a letter from Fire Department stating that they would like a copy of any application that has anything relating to fire service or prevention that comes before the Board. This is an effort to increase communication.

Kevin brought up the topic of upcoming conferences. The question arose regarding who would pay for members of the Board to attend.

Matt motioned to reopen the meeting to discuss the issue of payment for attending one of the conferences, Jennifer seconded

Vote 5-0 Motion to reopen meeting approved

Matt Shaw motioned to take monies from the Zoning Board budget to pay for attendance to a conference, Tom McGuirk seconded.

Vote 5-0 Motion Approved

Jack Lessard motioned to adjourn at 9:15 pm, seconded by Tom McGuirk.

Vote 5-0 Meeting Adjourned